

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

BETH ISRAEL DEACONESS
MEDICAL CENTER, INC.

Employer¹

and

AREA TRADES COUNCIL A/W IUOE LOCAL 877,
IBEW LOCAL 103, CARPENTERS UNION NERCC
LOCAL 51, PLUMBERS (UA) LOCAL 12 AND
PAINTERS DISTRICT COUNCIL 35

Joint Petitioners²

Case 1-RC-21608

DECISION AND DIRECTION OF ELECTION³

¹ The name of the Employer appears as amended at the hearing.

² The name of the Joint Petitioners appears as corrected at the hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. At the hearing, the Employer moved to dismiss the petition on the basis that there was no showing that the Area Trades Council is a labor organization within the meaning of Section 2(5) of the Act. Moreover, the Employer maintains that, even if the Area Trades Council is a labor organization, the petition should be dismissed nevertheless because the five named affiliated unions have not shown that they intend to jointly represent the unit. The Employer advanced this latter position twice before at representation hearings involving these same parties, Case 1-RC-20940 (BIDMC I) and Case 1-RC-21026 (BIDMC II). The petitions in the prior two cases were filed under the names of International Union of Operating Engineers Local 877, International Brotherhood of Electrical Workers Local 103, Plumbers Union Local 12, and New

This is the third petition filed by the Joint Petitioners seeking to represent a unit of skilled maintenance employees employed by the Employer. As indicated below, the parties have changed their positions on the appropriate unit in various respects from their prior positions. As a result, I am called upon in this decision to decide the unit placement of several job classifications and have included some, while excluding others. My specific findings are discussed in detail below.

BACKGROUND - PRIOR DECISIONS

The Employer, Beth Israel Deaconess Medical Center, Inc. (BIDMC), operates a non-profit acute-care hospital in Boston, Massachusetts and satellite health clinics in Boston, Chelsea, and Lexington, Massachusetts. On November 25, 1998, the Joint Petitioners filed a petition in BIDMC I, in which they sought to represent a unit of skilled maintenance employees in BIDMC's maintenance and engineering department at its main facility in Boston. BIDMC took the position that various other classifications of employees at its main facility and Lexington facility should be included in a skilled maintenance unit. On February 12, 1999, after a lengthy hearing, I issued a

England Regional Council of Carpenters as joint petitioners. I issued Decisions and Directions of Elections on February 12, and July 6, 1999, respectively. In BIDMC I, I determined the four unions had shown the requisite intent to bargain jointly and, therefore, denied the Employer's motion to dismiss. In BIDMC II, I again found that these same four unions were proper joint petitioners and, again, denied the Employer's motion to dismiss. The instant petition differs from the first two cases in that it is filed under the name of the Area Trades Council, affiliated with the same four unions as before, but with the addition of the Painters District Council. In decisions and directions of election in *New England Baptist Hospital*, Case 1-RC-21097 (November 22, 1999) and *Massachusetts Eye and Ear Infirmary*, Case 1-RC-21199 (August 3, 2000), as in the instant case, the joint petitioners' name was in the form of the Area Trades Council affiliated with the individual unions. I found in those cases that the inclusion of the term "affiliated with" did not alter the joint petitioners' status. Moreover, under the name of the Area Trades Council "affiliated with" the joint petitioners currently represent units at Children's Hospital, Brigham & Women's Hospital, Faulkner Hospital, New England Baptist Hospital, Massachusetts Eye & Ear Infirmary, Harvard University, and Harvard University Medical School. Therefore, I find the Area Trades Council and the five named unions are labor organizations within the meaning of Section 2(5) of the Act.

The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Decision and Direction of Election in BIDMC I, in which I found the following to be an appropriate unit for collective bargaining:

All full-time and regular part-time skilled maintenance employees employed by the Employer at its acute care hospital in Boston, Massachusetts, at the Bowdoin Street Health Center, Little House Health Center, and Joslin Clinic in Boston, Massachusetts; at Medical Care Center North in Chelsea, Massachusetts; and at Medical Care Center-Lexington in Lexington, Massachusetts, including the following positions:

- Maintenance mechanic HVAC
- Maintenance mechanic mechanical
- Maintenance mechanic electrical
- Maintenance mechanic general
- Painter
- Groundskeeper
- Storekeeper/general mechanic
- Building services/general mechanic
- Lead mechanic
- Van driver/maintenance assistant
- Maintenance technician/shipper/receiver
- Biomedical engineering technicians I, II, and III
- Clinical engineering specialist
- Respiratory technician/clinical engineering department
- Equipment engineer in the anesthesia department
- Equipment engineer in the cardiology department
- Radiology equipment technician
- RF coil engineer in the radiology department
- Telecommunications technician
- Senior telecommunications technician
- Network technician/layers one and two
- Network engineer/layers one and two

But excluding research materials inventory technician, program analyst III, driver/courier, purchasing specialist in the engineering and maintenance department, equipment repair technicians in the materials and logistics department, equipment technicians in the respiratory care department, network engineers and network analysts/layers three through seven, service technicians I and II in the clinical engineering department, hardware services technicians, media services specialist for audio-visual services, media services specialist-telemedicine coordinator, media services associate/video production, producer/chief engineer: interventional cardiology/internal consultant-communications, flow cytometry specialist, senior research associate, research associate, PE, senior systems engineer, guards, and supervisors as defined in the Act.

The Joint Petitioners withdrew the petition in BIDMC I prior to an election. In a second petition, which was filed on May 28, 1999 (BIDMC II), the Joint Petitioners sought to represent all employees in the unit found appropriate in the prior case, with the exception that the Joint Petitioners now agreed to the exclusion of Supervisor-Telecommunications John Casavant from the unit as a statutory supervisor.⁴

In BIDMC II, BIDMC adhered to the position it took in BIDMC I that a skilled maintenance unit must also include hardware service technicians, service technicians in the clinical engineering department, equipment repair technicians in the materials and logistics/CPD department, and equipment technicians in the respiratory care department, all of whom were excluded from the unit in BIDMC I. BIDMC also contended, as was the case in BIDMC I, that lead mechanics should be excluded from the unit as statutory supervisors.

On July 6, 1999, after a hearing and the introduction of additional evidence, I issued a decision in which I modified the unit found appropriate in BIDMC I. I found the following to be an appropriate unit for collective bargaining in BIDMC II:

All full-time and regular part-time skilled maintenance employees employed by the Employer at its acute care hospital in Boston, Massachusetts, at the Bowdoin Street Health Center, Little House Health Center, and Joslin Clinic in Boston, Massachusetts; at Medical Care Center North in Chelsea, Massachusetts; and at Medical Care Center-Lexington in Lexington, Massachusetts, including the following positions:

Maintenance mechanic HVAC
Maintenance mechanic mechanical
Maintenance mechanic electrical
Maintenance mechanic general
Painter
Groundskeeper

⁴ In BIDMC I, BIDMC took the position that John Casavant, who was identified in error as John Cassidy, was a statutory supervisor, while the Joint Petitioners maintained that he was not a statutory supervisor. I found that BIDMC had failed to meet its burden of proving Casavant's supervisory status and included him in the unit. The parties subsequently stipulated in BIDMC II, and I found, that Casavant, who then had the title of senior telecommunications technician but now has the title of supervisor-telecommunications, was a statutory supervisor who should have been excluded from any unit found appropriate.

Storekeeper/general mechanic
Building services/general mechanic
Lead mechanic
Van driver/maintenance assistant
Maintenance technician/shipper/receiver
Biomedical engineering technicians I, II, and III
Clinical engineering specialist
Respiratory technician/clinical engineering department
Equipment engineer in the anesthesia department
Equipment engineer in the cardiology department
Radiology equipment technician
RF coil engineer in the radiology department
Telecommunications technician
Network technician/layers one and two
Network engineer/layers one and two

But excluding research materials inventory technician, program analyst III, driver/courier, purchasing specialist in the engineering and maintenance department, equipment repair technicians in the materials and logistics department, equipment technicians in the respiratory care department, network engineers and network analysts/layers three through seven, service technicians I and II in the clinical engineering department, hardware services technicians, media services specialist for audio-visual services, media services specialist-telemedicine coordinator, media services associate/video production, producer/chief engineer: interventional cardiology/internal consultant-communications, flow cytometry specialist, senior research associate, research associate, PE, senior systems engineer, guards, and supervisors as defined in the Act.

The Employer filed a request for review of my decision in BIDMC II and, by Order dated August 14, 1999, the Board determined that the Employer's request for review raised substantial issues with respect to the exclusion of the equipment technicians in the respiratory care department and the hardware services technician. Accordingly, the Board ordered that these employees vote subject to challenge.

THE PRESENT CASE

On February 25, 2003, the Joint Petitioners filed this petition seeking to represent substantially the same unit that I found appropriate in BIDMC II, but with some changes as noted below upon which the parties agree and with other changes upon which the parties disagree.

Regarding the changes on which the parties agree, first, the references in the unit description to Little House and the Joslin Center should be deleted because Little House is closing and BIDMC no longer has an arrangement with the Joslin Center. Second, although the following positions should remain in the unit, their titles have changed: a) the maintenance mechanic general should now be divided into the positions of carpenter and locksmith; b) the van driver/maintenance assistant is now called maintenance shipper/receiver; and c) the respiratory technician/clinical engineering department is now simply called respiratory technician. Finally, the following new job classifications should be included in the unit: maintenance mechanic, maintenance mechanic/radiation treatment planning, general mechanic/radiation treatment planning, and zone mechanic.

Regarding the changes upon which the parties disagree, first, the parties dispute the placement of the new classification of engineer. The Employer would add the engineer classification to the unit, while the Joint Petitioners would exclude it. Second, the Employer contends that the classifications of painters and storekeeper/general mechanic, previously included in the unit found appropriate in BIDMC II should be excluded. The Joint Petitioners maintain that they should remain in the unit. Third, the Joint Petitioners contend that the groundskeeper, previously included in the unit found appropriate in BIDMC II should now be excluded. The Employer would continue to include the groundskeeper position in the unit. Fourth, the Employer contends that the positions of service technicians I and II in the clinical engineering department and hardware services technicians, now called IS support specialist and IS support specialist senior,

which were excluded from the unit in BIDMC II, should now be included in the unit. The Joint Petitioners would continue to exclude these positions. Finally, the Joint Petitioners contend that the network technician/layers one and two and the network engineer/layers one and two, included in the unit in BIDMC II, should now be excluded because they are employed by CareGroup, not BIDMC. The parties stipulated, however, that, apart from the Joint Petitioners' contention, the nature of the duties of the network technicians and engineers would appropriately place them in the unit.

Therefore, I must decide whether the positions of engineer, storekeeper/general mechanic, painter, groundskeeper, service technician II in the clinical engineering department, IS support specialist, and IS support specialist senior should be included or excluded. In addition, since the parties already stipulated that the duties of the network technicians/layers one and two and network engineers/layer one and two would place them in a skilled maintenance unit, I must determine whether the employer entity under which they work alters their inclusion.

THE APPLICABLE LAW

As I have previously indicated, in considering which positions properly belong in a skilled maintenance unit, the Board follows certain general principles. The Board will not exclude a classification from a skilled maintenance unit simply because an employer has administratively placed that classification in a department other than the plant operations department. Further, employees who maintain, repair, and operate complex, sophisticated equipment will not be excluded from a skilled maintenance unit solely because that equipment is not directly part of the physical plant or because the equipment is used in patient care. *Toledo Hospital*;⁵ *San Juan Medical Center*.⁶ On the other hand, not every employee who uses a tool belongs in a skilled maintenance unit. Employees who perform only low-level repairs or routine maintenance of

⁵ 312 NLRB 652, 654 (1993).

⁶ 307 NLRB 117 (1992).

equipment, even if the equipment is complex and sophisticated, do not belong in a skilled maintenance unit. *Jewish Hospital*;⁷ *Toledo Hospital*.⁸ Further, employees whose primary job is to operate equipment are not transformed into skilled maintenance workers simply by virtue of the fact that they perform routine maintenance on the equipment they use. *Ingalls Memorial Hospital*.⁹

THE CLASSIFICATIONS IN ISSUE

I. Engineer

Engineer, which is a position in the Department of Radiation Oncology, was created since the issuance of BIDMC I and BIDMC II. There is one engineer, Francis Pike, who the Employer would include in the unit. The Joint Petitioners seek to exclude him.

Radiation Oncology has two functions. The first function is to take images of a cancer or tumor and devise a strategy to treat the tumor with radioactive seeds or beams (i.e., treatment planning), and the second is to treat the patient. In contrast, the Radiology Department performs diagnostic functions. There are two mechanics in the radiation treatment planning side of the Department of Radiation Oncology whom the parties agreed to include in the unit. These mechanics produce lead blocks and devices that aid in the delivery of the treatments, such as mouthpieces and devices to hold the patient's head steady. They work with lathes, drill presses, and saws.

The engineer helps to maintain and troubleshoot the three linear accelerators in the treatment side of the department and the CT simulator and variance simulator in the treatment planning side of the department. Linear accelerators are the devices that deliver the radiation beam. The engineer calibrates the radiation beam strength, direction, and angle. If, in the course of troubleshooting, Pike is unable to determine the problem, an outside vendor is called in. The department has service

⁷ 305 NLRB 955, 958 (1991).

⁸ Supra at 655

contracts with an outside vendor covering all the equipment. All of the machines, except for one of the accelerators, are new and, therefore, do not usually present problems. The accelerator that is not new has required the services of the vendor about three times since November 2002.

In the course of his duties, the engineer uses simple tools such as pliers and screwdrivers. The engineer does not deliver direct patient care. The engineer does not build any special equipment. Rather, he replaces parts and troubleshoots problems.

The engineer is required to have a minimum of a Bachelor of Science degree in engineering. The position is classified as a Grade 9 in the BIDMC salary schedule. The engineer interacts with the administrative staff, the Physics Department staff, and the therapists. The engineer and mechanics in the department report to the director of physics, Edward Holupka.

The Board has previously held that employees such as clinical engineers, who are highly skilled employees who maintain, repair, and calibrate sophisticated hospital equipment, belong in skilled maintenance units even though they have more education, a higher wage range, and different hours from the maintenance mechanics. *San Juan Medical Center*,¹⁰ *Ingalls Memorial Hospital*,¹¹ *Mercy Health Services North*.¹² Further, the Board has included them in skilled maintenance units even if they are in a separate department from the maintenance employees. *Toledo Hospital*¹³ (that the employer administratively placed these employees in a separate department, while perhaps a factor to be considered, is not a touchstone in determining their unit placement). Accordingly, and noting that the parties have included the mechanics in radiation treatment planning, I shall include the engineer in the unit.

⁹ 309 NLRB 393, 397 (1992).

¹⁰ *Supra*.

¹¹ *Supra*, 309 NLRB 393, at 396-397.

¹² 311 NLRB 1091 (1993).

¹³ *Supra*, 312 NLRB at 652-653.

II. Painter

There are three painters. Painters were included in the units in BIDMC I and BIDMC II by stipulation of the parties. The Employer now seeks to exclude the painters from the unit.

Painters perform general interior painting and decorating work, although they may do some limited outside painting as well. The painters do light sanding, basic repair, and patching of walls and woodwork in the course of their painting. If more extensive patching is required, however, one of the carpenters would be called in to work with the painter. The tools a painter uses are rollers, brushes, scrapers, and putty knives. Although the Employer has a spray booth, there has not been any spray painting done in at least the past fifteen years.

The painter job description, which has been in effect since 1998, lists the painter's educational requirement as high school or technical school. The position requires institutional or commercial painting and finishing experience as well as familiarity with the proper use and storage of paint, chemicals, and tools required in the trade. Painters are classified as a Grade 6 in the BIDMC salary structure, as are the zone mechanics, groundskeepers, and the stockroom clerk.

Although the painters were previously included in the unit by stipulation of the parties, the Employer now seeks to exclude them. In post-hearing briefs, neither party was able to find a case in support of its position. I am not bound by the previous stipulations of the parties concerning classifications that were not previously in dispute, and as the matter has now been litigated, I have determined to exclude the painters from the unit.

The painters here perform general painting and refinishing duties that are not the hallmarks of skilled maintenance employees. The tools used by the painters are not typical of skilled maintenance employees, and the position description requires only a high school diploma rather than the completion of a specialized training or apprenticeship program. Accordingly, as it appears

that the painters perform duties not requiring a high degree of skill or specialized training, the painters will be excluded from the unit. *Four Seasons Nursing Center*.¹⁴

III. Storekeeper/general mechanic a/k/a stockroom clerk

John Watty has held this position for more than twenty years and is the only employee in the position. In BIDMC I and BIDMC II, the parties, who at the time titled the position storekeeper/general mechanic, included it in the unit by stipulation. The Employer now seeks to exclude this position, which it now refers to as stockroom clerk.

In BIDMC I, Director of Maintenance Operations Richard Marini described Watty's duties as follows: maintains a storeroom of supplies and equipment for the maintenance staff, performs minor repairs such as changing light bulbs and filters, and assists the maintenance mechanics in jobs that require several persons.

Marini likewise testified to Watty's current duties. There is no written job description for his position. Watty works out of the stock room, which is located at the Employer's East Campus. The stock room is in the vicinity of mechanical HVAC employees with whom he would be most likely to interact on a daily basis. Watty orders eighty percent of the stock for the maintenance department. His primary responsibility is to maintain par levels of stock, that is, to maintain the minimum level of whatever tools or disposable materials are used by the maintenance department. Maintaining the stock room occupies ninety percent of his time. The remaining ten percent of Watty's time is spent shipping out lamps collected under the lamp recycling program and shoveling snow. A box cutter is the only tool he uses in the maintenance of the stock room. Watty is classified as a Grade 6 in the BIDMC salary structure, as are the zone mechanics, groundskeepers, and painters.

¹⁴ 208 NLRB 403 (1974).

The Board has held that a skilled maintenance unit should generally include only those employees who perform skilled maintenance work, who fill the position of a trainee, or who serve as helpers or assistants to skilled maintenance employees in the performance of their work. *Barnes Hospital*.¹⁵ Here, the record does not disclose sufficient details as to the circumstances in which the stockroom clerk assists the maintenance mechanics to establish whether the stockroom clerk is generally engaged in skilled maintenance work, or acts as a helper or assistant to skilled maintenance employees in the performance of their work. Accordingly, and in view of the fact that the stockroom clerk has previously been included in the unit, albeit by stipulation of the parties, I will permit him to vote subject to challenge.

IV. Groundskeeper

There are four groundskeepers. The parties included this position in the unit in BIDMC I and BIDMC II by stipulation. The Joint Petitioners now want the position excluded.

In BIDMC I, I described the groundskeepers' primary duty as maintaining the grounds at the hospital. Thus, they cut grass, trimmed shrubs and trees, planted flowers, cleaned outdoor areas, disposed of trash, and swept walkways. They also maintained and repaired the equipment they used, such as lawnmowers and snow blowers. They were required to have a high school or technical school diploma and experience in institutional or commercial grounds maintenance, and familiarity with plants, trees, grounds-keeping equipment, and safety. The groundskeeper position, as with the painter position, was classified as a Grade 6.

Maintenance Operations Director Marini testified that the current duties of the groundskeepers are basically the same as they were in 1999. Thus, the groundskeepers maintain the hospital grounds. They care for all of the plantings and shrubbery. They fill potholes. They do the snow removal until it reaches the point where the removal is more than four people can handle. The

¹⁵ 306 NLRB 201 (1992).

tools they use in the course of their duties are shovels, pruners, hedge trimmers, lawn mowers, chain saws, wrenches, and screwdrivers. Groundskeepers replace blades on lawn mowers as well as brushes, shear pins, and batteries on snow removal equipment. A few of the groundskeepers have the skill to repair irrigation equipment, although the extent of this skill is not detailed. Lately, the groundskeepers have been forced to spend about twenty percent of their time performing repair and maintenance on their equipment due to the fact a mechanic is on a medical leave of absence. The groundskeepers do not perform engine repairs. Rather, that work is sent out to a vendor.

In the spring, there is extra work on the grounds that needs to be done, in particular mulching. Since this presents overtime opportunities, other employees, such as carpenters, mechanics, and painters, are enlisted to help the groundskeepers in this task. Likewise, in the winter, others may help out with snow shoveling.

The medical center owns a bobcat that is used to move snow, distribute mulch, and lift pallets. A bobcat operator must have a hoisting engineer's license. Only one groundskeeper, Mike Trzcinski, has this license. Marini was not aware whether Trzcinski had this license when he was hired or acquired it after his hire. Marini testified that he had heard from a supervisor that Trzcinski also has a degree in horticulture, although he did not know the level of this degree. The required groundskeeper educational level, high school or technical school, as well as the experience level and salary grade are the same as they were in 1999.

I noted in BIDMC I that in cases since the rulemaking, the Board has found that groundskeepers are not skilled maintenance employees and has excluded them from such units.

Jewish Hospital,¹⁶ *Barnes Hospital*,¹⁷ *Ingalls Memorial Hospital*,¹⁸ Cf. *Toledo Hospital*,¹⁹ in which the Board noted that no request for review was filed with regard to the Regional Director's inclusion of the groundskeepers, although they had been excluded from skilled maintenance units in previous cases. The duties of the groundskeepers here are similar in nature to the duties of those employees excluded by the Board in the above-cited cases. Accordingly, I shall exclude the groundskeepers from the unit here.

V. Service technicians I and II in the clinical engineering department

There is one service technician in the clinical engineering department, Robert Hunt, who is a service technician II. The Employer seeks to include this position in the unit. The Joint Petitioners would exclude the service technician positions from the unit. Currently the service technician I position is inactive, although it could be reactivated at some future date.

In BIDMC I, the Employer first sought to include the service technicians I and II in the unit. After the matter was fully litigated, however, I determined that the positions should be excluded from the unit found appropriate. In doing so I made the following findings of fact and conclusions of law:

Two service technicians in this department repair business machines such as photocopiers and FAX machines. The job requires a high school diploma and two to five years experience. Technical training is preferred, but not required. Service technicians I are classified as a Grade 5, while service technician II's are classified as a Grade 6.

I find that the service technicians are not skilled maintenance employees and will exclude them from the unit. Their job requires no specialized training, and their lower skill level is reflected in their lower wage grade. Further, they do not repair "hospital-type" equipment. *Toledo Hospital*²⁰ (excluding sign fabricator/reprographics repairman, camera

¹⁶ Supra, 305 NLRB 955.

¹⁷ Supra, 306 NLRB 201.

¹⁸ Supra, 309 NLRB 393.

¹⁹ Supra, 312 NLRB at 654 n.2.

²⁰ Supra, 312 NLRB at 654-655.

technician, and finishing operator/inventory clerk, inter alia, because they work on equipment which is unrelated to the hospital's physical plant or to complex "hospital-type" equipment).

In BIDMC II, the Employer again sought to include these positions in the unit but did not present any additional evidence on the matter. Again, for the reasons stated in BIDMC I, I excluded them from the unit.

The job description for service technician I is the same as that in effect in 1999. There were no revisions to the job description for service technician I, because there is no one in that position and it may never be filled.

The job description for service technician II was revised in June 2002. The revisions related to terminology and not to duties, responsibilities, or qualifications. The service technician II position is now salary Grade 7, instead of 6, as it was in 1999. This change was made about two years ago to reflect the greater complexity of the equipment. The educational requirements are a high school diploma, GED equivalent, or an A.S. degree in electronics technology. The experience requirements are five years servicing copiers, fax machines, and typewriters; an in-depth knowledge of mechanical and electromechanical systems; and a basic knowledge of mechanics, optics, electricity, and electronics. Hunt has held the position for more than five years. He received his training in the Air Force. Hunt has received training from the manufacturers of the equipment that he services and maintains.

The service technician II is responsible for testing, troubleshooting, repair, and calibration of copiers, fax machines, typewriters, and Dictaphones. Fax machines and copiers are located at nursing stations, in offices, and in the pharmacy. The Employer has service contracts on the copiers but not on fax machines, although the newer fax machines are under warranty. If a biomedical

engineering technician III,²¹ the position that oversees the patient data card plate makers, is on vacation, some service technicians have the skill to act as a back up for maintenance of the plate maker. Tools used by the service technician II are wrenches, nut drivers, screwdrivers, soldering irons, meters, and, at times, test equipment. The service technician has an office in the basement. When the service technician II is on vacation the duties are divided among the biomedical electronic technicians.

Recently, Hunt alerted the medical center to the fact that the older model fax machines retain images which would be problematic under the new patient privacy regulations. Based on his alert the older machines were replaced.

There has been one service technician, Rick Gore, who moved to a biomedical electronic technician position. The date of this move was unknown, and it was also unknown if this move was prior to the 1996 merger that created BIDMC. Gore was hired as a service technician I. His primary duty was to support the service technician II, but he also had the secondary duty to support the biomedical electronic technicians. After greater opportunities opened in the biomedical field, he transitioned to a biomedical electronic technician I position.

Regarding the service technician I position, it appears that the position is currently vacant, and there are no plans to fill the position. In accord with established Board policy, I find it unnecessary to determine the unit eligibility of this position. *Milwaukee Children's Hospital Association*.²² As to the service technician II position, I continue to find that this position should be excluded from the unit.

The skills of the service technician II position are not typical of those of employees found in skilled maintenance units, and the educational requirement for the position is similarly minimal. In

²¹ This position, litigated in BIDMC I, is included in the unit by agreement of the parties. According to the job description for the position, the correct title is Biomedical Electronic Technician.

²² 255 NLRB 1009, 1013, fn. 9 (1981).

addition, much of the office-type machinery worked on by this classification is subject to service contracts to outside vendors. Despite the revisions in the terminology of the job description, this position continues to repair equipment that is other than "hospital type." *Toledo Hospital*.²³ In this regard, I reject the Employer's contention that the classification must be included in the unit because the equipment maintained by this classification is "essential and directly related" to the Employer's operations. There is no suggestion in *Toledo Hospital* or elsewhere that the inclusion of employees in a skilled maintenance unit is a function of their importance to the operation of a hospital, as opposed to the nature of the machinery involved in their work. Finally, that employees in this classification may occasionally assist skilled maintenance employees in a task does not require the inclusion of this classification in a skilled maintenance unit. *Toledo Hospital*.²⁴ I, therefore, will exclude the service technician II classification from the unit.

VI. IS support specialist and IS support specialist senior

There are seven IS support specialists and six IS support specialists senior. These employees were formerly known as hardware service technicians. In BIDMC I and BIDMC II, I found that the hardware service technicians were not skilled maintenance employees and, therefore, excluded them from the unit. In doing so, I found that their job requires no specialized training, and their low wage grade reflected their lower skill level. Relying on *Toledo Hospital*,²⁵ I found that they do not repair "hospital-type" equipment. The Employer appealed my decision in BIDMC II to the Board, and the Board allowed the hardware service technicians to vote under challenge.

In this matter, the Employer continues to adhere to its position that the former hardware service technicians, now known as IS support specialist and IS support specialist senior, should be included in the skilled maintenance unit. The Joint Petitioners continue to seek their exclusion.

²³ *Supra*, , 312 NLRB at 655.

²⁴ *Id.*

Margaret Hyland, the IS Director in Charge of Support Services, testified on behalf of the Employer. The team of support specialists is divided into the support field team and the asset management team.²⁶ There are currently six support specialists and two senior support specialists in the asset management team, and one support specialist and four senior support specialists in the support field team. Both teams perform the same type of work except that the support field team goes in the field to work on the equipment, whereas the asset management team works from a workstation and tries to fix the problem over the telephone. The teams work in the IS Support Call Center, also known as the help desk.

The duties and responsibilities of the support specialists are the same as they were in 1999 as hardware service technicians. The support specialists are responsible for ensuring that the Employer's PCs and workstations are working at the components level and they are responsible for the maintenance and repair of the electronic components within the printers and PCs. The field team goes out to the site of the equipment, whether it is a clinical or office area. The asset management team has the same responsibilities as the field support team, but they also do inventory and maintain the parts and equipment.

The support specialists and senior support specialists are responsible for ensuring the interoperability of all PCs, printers, and other connected devices, whether they are in the clinical or business areas. There are about 5,000 PCs and 1700 printers at BIDMC. The work of the support specialist is primarily focused on the printers, that is, making sure the data on the PC is successfully transferred to the printers. They need to troubleshoot if the transfer is not being made and fix the printer problem. The senior support specialists are able to troubleshoot the higher-level inter-

²⁵ 312 NLRB 652, 653 (1993).

²⁶ The parties stipulated, and I find, that Sherry Caperton – Asset Management Financial, Ron Gochakowski – Team Leader of the Asset Management team, Joe Cross – Technical Resource in the Asset Management team, and Debbie Holmes – Team Leader of the Support Field team are statutory supervisors that should be excluded from any unit found appropriate.

operability issues between the hardware, the network, and the software and act as mentors to the support specialists.

Specialists are not required to hold any certifications. “A couple” do have an A-plus certification, which is a certification earned through a generic skills program available from a number of vendors.

The job description for the IS support specialist lists the qualifications as: Associate Degree related to Information Systems or MCSE and/or A-plus Certification with 2 years in field experience or a minimum of 3 years in field computer hardware service/support/repair experience. The job description lists the skills required as: technical skills, knowledge and understanding of personal computers, operating systems (Windows 95, NT, 2000, XP) hardware and peripherals, and applications (MS Word, Excel, Access, Outlook and Internet Explorer). The IS support specialist is a Grade 7.

The job description for the IS support specialist senior lists the qualifications as: Bachelor’s Degree or MCSE with 3 years in field experience or a minimum of 5 years in field desktop support experience. The job description lists the skills as: knowledge and understanding of interoperability between various software/applications and systems, hardware devices and drivers (storage, I/O devices, client computers), desktop computing environment, and network services. The IS support specialist senior is a Grade 8.

In view of the subsequent litigation of these positions, I have determined, on balance, to include the positions in the unit. The skills required by these positions are advanced, as is reflected by the educational requirements. Thus, the IS support specialist is preferred to have an Associate Degree or another form of advanced training, and the IS support specialist senior must have even greater education and experience.²⁷ As computer technology continues to advance, the skill set

²⁷ This can be contrasted with the minimal education requirements and skill sets necessary for duties associated with the less complicated equipment of the service technician II position.

necessary to repair and maintain the equipment, as well as to navigate the related interoperability issues occasioned by advanced software and network designs, similarly becomes more complex. In this view, these positions would now appear to be more similar to other positions that the Board has come to include in skilled maintenance units. *Toledo Hospital* (telecommunications technicians).²⁸ See also *Rhode Island Hospital*.²⁹

VII. Network services technicians/layers one and two and network engineers/layer one and two

There are two network services technicians/layers one and two and two network engineers/layers one and two. In BIDMC I, I found the employees in both classifications were skilled maintenance employees and included them in the unit found appropriate. The Joint Petitioners now dispute their inclusion in the unit solely on the basis that they are no longer employed by BIDMC. Rather, they are now employed by CareGroup.

CareGroup is the parent organization formed in 1996 to oversee the hospitals that were merged into BIDMC, as well as the other affiliated health care entities. The intent was to gain economies of scale by centralizing the services of purchasing, finance, information services (IS), and human resources. Some employees in these service areas became, or were hired as, CareGroup employees. Over time, however, the CareGroup entity has been dismantled. Currently, only the Legal Department, the office of the General Counsel, and some IS employees are paid under the CareGroup entity.

The Network Services employees at BIDMC were transferred from the BIDMC payroll to the CareGroup payroll in fiscal year 2001. The CareGroup payroll is processed by the BIDMC Payroll Department. Other than this payroll transfer, however, there were no changes in the employees' location, supervision, duties, status, pay, benefits, or working conditions. These

²⁸ Supra, 312 NLRB at 654.

²⁹ 313 NLRB 343, 352 (1993).

employees continued to be subject to all of the BIDMC policies and procedures. They are covered by the BIDMC handbook. Their personnel files are maintained with those of the BIDMC employees in the BIDMC Human Resources Department. BIDMC human resources handles all recruiting, applications, interviewing, and hiring of applicants.

These CareGroup employees located at BIDMC were scheduled to be transferred back to the BIDMC payroll in January 2003. As of the hearing, however, that transfer back had not yet been made. Again, this would be a paper transfer with no change in the employees' location, duties, status, pay, benefits, or working conditions. In anticipation of this transfer back, a network services supervisor hired in December 2002 was placed directly on to the BIDMC payroll instead of the CareGroup payroll.

It is apparent from the record that while the network services technicians and network engineers are on the CareGroup payroll, their terms and conditions of employment are controlled by BIDMC. Under these circumstances, CareGroup functions more as a payroll service for BIDMC, as opposed to being the employer of these employees. Moreover, it appears that this payroll service function is likely to be terminated in the future. Accordingly, I find that the network services technicians and network engineers are employees of BIDMC. In view of the parties' stipulation that the nature of their duties appropriately places them in the unit, I shall include the network services technicians and network engineers in the unit.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees employed by the Employer at its acute care hospital in Boston, Massachusetts, at the Bowdoin Street Health Center in Boston, Massachusetts; at Medical Care Center North in Chelsea, Massachusetts; and at Medical Care Center-Lexington in Lexington, Massachusetts, including the following positions:

Maintenance mechanic HVAC

Maintenance mechanic mechanical
Maintenance mechanic electrical
Carpenter
Locksmith
Building services/general mechanic
Lead mechanic
Maintenance shipper/receiver
Maintenance technician/shipper/receiver
Biomedical electronic technicians I, II, and III
Clinical engineering specialist
Respiratory technician
Equipment engineer in the anesthesia department
Equipment engineer in the cardiology department
Radiology equipment technician
RF coil engineer in the radiology department
Telecommunications technician
Maintenance mechanic
Maintenance mechanic Radiation Treatment Planning
General Mechanic Radiation Treatment Planning
Engineer Radiation Treatment
Zone mechanic
Network services technicians/layers one and two
Network engineers/layers one and two
IS support specialist
IS support specialist senior

But excluding research materials inventory technician, program analyst III, driver/courier, purchasing specialist in the engineering and maintenance department, equipment repair technicians in the materials and logistics department, equipment technicians in the respiratory care department, network engineers and network analysts/layers three through seven, media services specialist for audio-visual services, media services specialist-telemedicine coordinator, media services associate/video production, producer/chief engineer: interventional cardiology/internal consultant-communications, flow cytometry specialist, senior research associate, research associate, PE, senior systems engineer, service technician II, painters, groundskeepers, guards, and supervisors as defined in the Act.

There are approximately 91 employees in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this

Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Area Trades Council a/w IUOE Local 877, IBEW Local 103, Carpenters Union NERCC Local 51, Plumbers (UA) Local 12, and Painters District Council 35.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*,³⁰ *NLRB v. Wyman-Gordon Co.*³¹ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional

³⁰ 156 NLRB 1236 (1966).

³¹ 394 U.S. 759 (1969).

Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.³² In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before May 1, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 8, 2003.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 24th day of April 2003.

470-5880

h:\r01com\decision\skilled maintenance\rc21608 (beth israel deaconess) skilled maintenance(kfm).doc

³² 315 NLRB 359 (1994).